

Planning Board Minutes 09/16/08

NEWMARKET PLANNING BOARD
TOWN COUNCIL CHAMBERS
SEPTEMBER 16, 2008
7:00 P.M.

Present: John Badger (Chairman), Judith Carr (Town Council representative), Diane Hardy (Town Planner), Chester Jablonski, Rick McMenimen (alternate), Janice Rosa, Peter Roy (Vice-Chairman), Val Shelton, George Willant

Absent:

Chairman Badger called the meeting to order at 7:30 p.m.

Pledge of Allegiance

Public Comments

None.

Review and Approval of Minutes: 06/17/08, 07/01/08, 07/15/08, 08/12/08, 08/26/08

Chairman Badger suggested reviewing the minutes at the end of the meeting.

Chairman Badger noted that Janice Rosa would be late this evening. He appointed Rick McMenimen to fill in until she arrived.

Application for Alternate Position:

Chairman Badger suggested this be done at the end of the meeting.

Regular Business

Public hearing for an application for Boundary Line Adjustment.

Applicants/Location: Claudie Grout at 8 Creighton Street, Tax Map U3, Lot 21, R4 Zone and Mary & Mark Swanson, 8 Prescott Street, Tax Map U3, Lot 25, R4 Zone.

Description: The proposal is to adjust the boundary line to go around an existing garage located on Tax Map U3, Lot 25, as the lot line currently runs through the garage.

Jason Pohopek, a licensed land surveyor working with his father Bruce Pohopek, stated he would be representing Claudie Grout and Mark and Mary Swanson for a boundary line adjustment at 8 Creighton Street, Tax Map U3, Lot 21, R4 Zone and 8 Prescott Street, Tax Map U3, Lot 25, R4 Zone. He showed the Board how the boundary line dissected the existing garage. The new lot line would go around the garage. Approximately 170 square feet would be transferred from Lot 21 to Lot 25. Lot 25 is an existing non-conforming lot. This transfer would increase the square footage of this lot therefore making it more conforming.

Val Shelton asked about setback requirements. Jason Pohopek explained this application would not meet the setback requirements, as the garage would be two feet off the property line. This application would ensure the garage is on the appropriate property.

George Willant asked how this situation arose. Jason Pohopek answered he believed the previous owners of both lots had been friends. When the owner of Lot 25 built the garage, the land had not been properly surveyed.

Town Planner Diane Hardy explained Section 1.05 (C) of the Newmarket Zoning Ordinance provides a special provision for non-conforming lots. She read: "No action shall be permitted to change the boundary of the lot unless it brings the lot closer to conformance with this Ordinance, and it makes no other aspect of the lot and/or all structures thereon more non-conforming."

Town Planner Diane Hardy explained she had reviewed the application against the setback and dimensional requirements. One lot is a legal non-conforming lot of record. This boundary line adjustment would bring this lot line around the garage and would bring this lot more into conformity. She recommended the Board accept the application as complete and approve the boundary line adjustment.

Jason Pohopek noted the new plans reference a boundary line agreement between the owners of Lots 24 and 23. This agreement is on record with the Register of Deeds.

Chairman Badger opened the Public Hearing at 7:38 p.m.

No comments.

Chairman Badger closed the Public Hearing at 7:38 p.m.

Action

Motion: Val Shelton made a motion to accept the application as complete.

Seconded: George Willant

Vote: All in favor

Action

Motion: Val Shelton made a motion to approve the application as submitted.

Seconded: Chester Jablonski

Vote: All in favor

Public hearing for an application for Subdivision and Special Use Permit.

Applicants: Norman Curti, Jane Pinney, Priscilla Syphers, Gail Mackenzie & Adreinne Rubino/The Nature Conservancy

Location: Wadleigh Falls Road, Tax Map R5, Lot 78, R1 Zone, in Newmarket, and Tax Map 17, Lot 35, in Durham.

Description: The proposal is to subdivide to enable conveyance of 115+/- acres of land to the Nature Conservancy. The existing house and barn would remain on a 5 acre parcel.

Bill Doucet, from Doucet Survey, stated he would be representing the Smith sisters and The Nature Conservancy. Duane Hyde from The Nature Conservancy was present, as well. He explained this parcel abuts Route 152, also known as Wadleigh Falls Road. This property is known as the Smith Farm and is located near the Town wells. This 115-acre parcel would be subdivided to create one five-acre parcel, which would contain the existing house and barn with the remaining 115 acres would be conveyed to The Nature Conservancy. The Residential Open Space Design ordinance allows a lot to be created with less than the required 200 feet of road frontage. There is not 400 feet of frontage as would be required for a conventional subdivision.

Chairman Badger asked if the Town of Durham is on board with this application. Bill Doucet noted the Town of Durham had been notified as an abutter. There would be no subdivision taking place in Durham. This land has been used for agricultural purposes. There is a gravel pit on the property located in Newmarket. He understood the gravel pit had been used within the last year.

Chairman Badger asked if there would be plans for reclamation once The Nature Conservancy took over the gravel pit. Bill Doucet explained that by State law reclamation would need to take place within a few years. The Nature Conservancy is working with the Newmarket Planning Department, Newmarket Conservation Commission and NH DES on reclamation of the gravel pit. This gravel pit is unique; wildlife habitat has developed on the gravel pits. There are birds and turtles that live there. The Nature Conservancy is working on how to reclaim the gravel pit, so it is safe, while still preserving the wildlife habitat.

Chairman Badger asked if this application could have gone before the Zoning Board for a variance for road frontage rather than coming to the Planning Board for a Special Use Permit. Bill Doucet noted the applicant would have had a difficult time arguing the application meets the hardship criteria since the ordinance allows another alternative, i.e. the open space conservation subdivision.

Val Shelton asked if the entire remaining parcel would be encumbered by the easement. Bill Doucet explained within the Open Space Ordinance, there must be a certain amount of open space set aside. This is a two-lot subdivision. There will be a five-acre lot, which is not encumbered by the easement.

Chairman Badger noted the setback seemed to run through the barn. Bill Doucet answered the barn is preexisting and has been there for a while. The only way around the setback situation is by moving the house and barn, which is not feasible.

Town Planner Diane Hardy noted she had checked the plans against the checklist and finds them to be substantially complete. As part of the subdivision requirements there is a requirement for a full boundary survey. She explained there is one in the works. She asked Bill Doucet if he had the boundary survey that the Board could have tonight. She suggested that there be enough time allotted for review of this document before final approval. She added that there needed to be more information provided, including how much of the 115 acres is located in Newmarket. There are some typos and spelling errors that need to be corrected. There needs to be a certification regarding the Town of Durham put on the plan. The plan also needs to reference the permit required by NH DOT for highway access to the new lot. She would like to see the excavation area identified on the plan. Zoning Administrator Dan Vincent had provided some comments regarding the status of the gravel pit, which is not in conformance with current regulations. There is no detailed reclamation information on file. She recommended the Board accept the application as complete and move forward with a Site Walk.

Rick McMenimen asked how the lots equal 110 acres. Town Planner Diane Hardy explained that, in order to do an open space development, the applicant must complete a yield analysis to determine how many house lots could be built using conventional subdivision requirements.

George Willant asked how the frontage issue was addressed with the open space plan. Town Planner Diane Hardy answered there are waivers and reduced requirements under the open space subdivision regulations. The frontage can be less than the 200 feet that is normally required.

Action

Motion: Chester Jablonski made a motion to accept the application for Subdivision and Special Use Permit for property located Wadleigh Falls Road, Tax Map R5, Lot 78, R1 Zone, in Newmarket, and Tax Map 17, Lot 35, in Durham.

Seconded: George Willant

Vote: All in favor

Chairman Badger opened the Public Hearing at 7:58 p.m.

Drew Kiefaber, of 50 Elm Street, noted he is Chairman of the Open Space Commission. The Nature Conservancy had approached the Open Space Commission, as this project was beginning to request funding to help this project move forward. After careful consideration and evaluation, the Open Space Commission has voted to recommend to the Town Council that \$92,000 be taken from the 2002 Open Space Bond to apply towards the acquisition of this property for conservation. He noted the Town would get an interest in the property in the form of an easement, which would protect water resources. He explained Follett's Brook runs through this property to the Piscassic River. The easement would also preserve groundwater. Passive recreation will be allowed through several access points.

Ellen Snyder, of 26 Johnson Drive, stated she is on the Conservation Commission and has been on the Open Space

Commission in the past. She explained the Town would receive a grant from the NH DES Drinking Water Protection Program, for approximately \$128,000. There are a lot of funding partners, for this project including: the Durham Conservation Commission, the Lamprey River Advisory Committee, and the Great Bay Resource Protection Partnership. She thanked the owners of the property, as well as the numerous funding sources, for making the conservation of this land possible.

Margaret Thermopolis, of 12 Langs Lane, in Durham, asked whether the Town of Newmarket could own and enforce conservation restrictions on land located in Durham. The answer was yes. Bill Doucet explained the restrictions that would be enforceable by the Town of Newmarket, as they would hold an easement over that land.

Bill Doucet discussed the differences between an open space subdivision versus a conventional subdivision.

The Board set a site walk for September 20, 2008 at 9:00 a.m. Bill Doucet explained the existing driveway can be utilized and Planning Board members can park near the barn.

Chairman Badger closed the Public Hearing at 8:04 p.m.

Janice Rosa arrived at 8:06 p.m.

Action

Motion: Judith Carr made a motion to continue this application to the site walk then to the October 14, 2008 Planning Board meeting.

Seconded: Chester Jablonski

Vote: All in favor

Continuation of a public hearing regarding the possible rescission of a conditional subdivision approval granted to Walter Cheney.

Location: Cushing Road, Tax Map R2, Lot 36-13, Zone R1.

Description: The proposal is to subdivide the 71.65 acres into two lots: one 67.75 acre tract running parallel to Lubberland Creek to be conveyed to The Nature Conservancy; and the remaining land of 3.9 acres (170,708 square feet) to remain in the ownership of Walter Cheney.

This application was heard and conditionally approved at a public hearing on March 18, 2008. New information has become available which raises questions regarding whether Lot 13 can be legally subdivided. The public hearing concerns whether the conditional approval that was granted on this application on March 18, 2008 should be rescinded.

Chairman Badger noted the applicant has requested a six-month extension.

Val Shelton and Vice-Chairman Roy recused themselves from this application.

Chairman Badger appointed Rick McMenimen as a voting member for this application.

Based on the Town Attorney's advice, Chairman Badger recommended the Board approve a sixty-day extension to allow further analysis of this potential subdivision.

Action

Motion: George Willant made a motion to extend the conditional approval of the Planning Board dated March 18, 2008 pursuant to Section 2.17(C)(2) of the Newmarket Subdivision Regulations for a two-month period at the request of the applicant. This extension will expire at midnight on November 18, 2008.

Seconded: Rick McMenimen

Chairman Badger opened the Public Hearing at 8:16 p.m.

Dave Contarino, of Cushing Road, asked what the extension is needed for. Chairman Badger explained the extension request had been made by the applicant to allow for further research.

Chairman Badger closed the Public Hearing at 8:17 p.m.

Vote: All in favor

Val Shelton and Vice-Chairman Roy rejoined the Board.

Continuation of a Public hearing for an application for subdivision

Applicant: Donald F. Tucker/Great Woods Post & Beam

Location: 27 Neal Mill Road, Tax Map R7, Lot 4, Zone R1

Description: The proposal is to subdivide Lot 4 into two lots, proposed Lot 4-1 containing 12.48 acres with 400 feet of road frontage and being serviced by on-site water and subsurface disposal system, and proposed Lot 4-2 containing 120 acres or less, with about 3600 feet more or less of road frontage along Neal Mill Road.

Bernard Christopher noted Donald Tucker and Scott Bateman were also present. He explained Mr. Tucker is trying to subdivide his land for his daughter. Most questions had been answered at the site walk that had been held. He has spoken with his engineer, Jones and Beach Inc., who felt everything had been taken care of, which had been requested by the Planning Board.

Chairman Badger noted the Board had accepted this application as complete and had granted the waivers at the last meeting.

Town Planner Diane Hardy noted revised plans had been submitted showing the proposed driveway, house and septic system locations. During the site walk, she had been concerned when she noticed one of the test pits was filled with water. At an earlier meeting the Board had not required test pit data; however, she asked the Board to reconsider. She would feel more comfortable if a condition were placed on the approval requiring test pit data to be provided to the Building Inspector for review and approval prior to the issuance of a building permit. The applicant agreed to that being a condition of approval.

Chairman Badger opened the Public Hearing at 8:22 p.m.

No comments.

Chairman Badger closed the Public Hearing at 8:22 p.m.

Action

Motion: Chester Jablonski made a motion to approve the subdivision at 27 Neal Mill Road, Tax Map R7, Lot 4, Zone R1 with the condition that test pit data be submitted to the Building Inspector, prior to the issuance of the building permit.

Seconded: Janice Rosa

Vote: All in favor

Planning Board to consider application for alternate position

Mr. Schroadter explained he is new to Newmarket and had been living at 55 Smith Garrison Road since the spring. He explained his experience in LA, having been in sports marketing and real estate investing.

Action

Motion: Janice Rosa made a motion to appoint Mr. Schroadter as an alternate to the Planning Board.

Seconded: Vice-Chairman Roy

Vote: All in favor

Chairman Badger explained to Mr. Schroadter that he needed to see the Town Clerk to be sworn in. His term would expire May 2010.

Continuation of Review & Comment on request by Christopher Gaziano to construct a residence on property he owns on the Class VI portion of Neal Mill Road under RSA 674:41.

Mark Sullivan, representing Christopher Gaziano, explained the Planning Board has been asked to provide their recommendation to the Town Council as to whether the applicant can build a single family home and barn on land off the Class VI portion of Neal Mill Road under RSA 674:41(C). The proposal is to upgrade the road, although it will remain a Class VI road. There are areas of the road that will require additional material to be brought in. A total of 1,800 feet of roadway would be upgraded. This application would cause minimal impact, as it would be one house on 33 acres of land adjacent to the road. There would be no impact to the river or wetlands. The Class VI road would remain unpaved. Some brush on the sides of the road would need to be cut for electrical service installation. State statute allows building on Class VI roads, but requires Town Council approval.

Val Shelton asked who had locked the gate on the road. Mark Sullivan answered the Town had installed and locks the gate. He believed Mr. Gaziano, Mr. Tucker and the Fire Chief/Public Works Director all had keys. Val Shelton referenced NH RSA 231:21-a reading "All such highways shall be deemed subject to gates and bars; provided, however, that any gates or bars maintained by private land owners shall be erected so as not to prevent or interfere with public use of the highway, and shall be capable of being opened and reclosed by highway users. The selectmen (town council) may regulate such structures to assure such public use, and may cause to be removed any gates or bars which fall into disrepair or otherwise interfere with public use of the highway."

Val Shelton referenced the statement made about the Town owning Neal Mill Road, but noted she was unable to locate a deed. Town Planner Diane Hardy explained there are different ways the town could have acquired the road. The Town can acquire the rights to a road through prescriptive rights. After the road has been used continuously for a number of years (twenty) by the public, it becomes the Town's through the law of adverse possession. She noted this is not being disputed.

Val Shelton referenced Mark Sullivan's statement about the role of the Planning Board. She explained the Planning Board's role is to advise the Town Council of any concerns there may be relative to the adequacy of the road. She explained there seemed to be several wetlands and soil types along the road. She asked if the upgrades to the road would impact the wetlands under the Town of Newmarket's Wetlands Protection overlay District. Town Planner Diane Hardy explained a well exploration study might include some valuable information regarding wetland impacts. Prime wetlands mapping done by Wetland Scientist Mark West was also available.

Chairman Badger asked about power to the site. Mark Sullivan noted that Christopher Gaziano has spoken with PSNH; there would be telephone poles installed along the side of the road to the subject property. Christopher Gaziano stated there would be three or four poles before reaching his property. Mark Sullivan explained PSNH requires certain clearances for their poles, so tree cutting and trimming will be necessary.

Vice-Chairman Roy asked if a meeting could be scheduled with PSNH, so the trees that will be substantially trimmed or removed could be flagged. There may be trees out there that the Town wants to preserve. Val Shelton asked if easements would be needed to install the poles.

Town Planner Diane Hardy noted she had sent the engineering plan to the Town's review engineer, who had felt there was not a lot of detail on the plan. She recommended some members of the Board get together with the Fire Chief and Town's review engineer to form a Technical Review Committee. Fire Chief Rick Malasky needs to weigh in on emergency vehicle access.

Town Planner Diane Hardy suggested the Technical Review Committee could also work to create a draft policy for Class VI Roads. Mark Sullivan noted there are two Class VI roads in Newmarket. Chairman Badger asked Val Shelton to be on the TRC Committee and asked if it was appropriate to challenge the TRC with drafting a policy on Class VI roads. Val Shelton suggested that creating a draft policy within the same timeframe the TRC was asked to review the application could be unfair to the applicant.

Vice-Chairman Roy and Janice Rosa volunteered to be on the TRC.

Chairman Badger opened the Public Comments at 8:56 p.m.

Ellen Snyder, of 26 Johnson Drive, and member of the Conservation Commission explained the Conservation Commission had submitted comments to the Planning Board for review.

Don Tucker, of 156 Front Street in Exeter, New Hampshire noted he owned property in Newmarket. He recalled a conversation he had with his dentist who was a Planning Board member in Durham. He noted that Durham has 12 Class VI roads and suggested Newmarket talk with Durham to discuss how best to handle these kinds of roads.

Christopher Gaziano noted it is clear that the Conservation Commission is not on his side and does not want this single family home to be developed. He noted there had been discussions about the Conservation Commission purchasing the property. He felt their intent is to prohibit the development of the property to decrease the value of the property and ultimately purchase the property for nothing.

Ellen Snyder clarified that Christopher Gaziano was speaking about the Southeast Land Trust former interest in purchasing the land. The Newmarket Conservation Commission has not been involved in any land acquisition negotiations for this property.

Chairman Badger closed the Public Comments at 8:59 p.m.

Action

Motion: George Willant made a motion to continue this application to the October 14th Planning Board meeting.

Seconded: Chester Jablonski

Vote: All in favor

Review and Approval of Minutes: 06/17/08, 07/01/08, 07/15/08, 08/12/08, 08/26/08

June 17, 2008

The Board made a number of grammatical and spelling corrections.

Action

Motion: Chester Jablonski made a motion to accept the June 17, 2008 minutes as amended.

Seconded: Vice-Chairman Roy

Vote: In favor: Chairman Badger, Judith Carr, Chester

Jablonski, Rick McMenimen, Vice-Chairman

Roy

Opposed:

Abstained: Janice Rosa, Val Shelton, George Willant

Janice Rosa and Val Shelton abstained because they had not been at the meeting. George Willant abstained because he had not reviewed the minutes.

Rick McMenimen recommended that page and line numbers be added to the draft minutes for ease of review.

July 1, 2008

The Board made a number of spelling and grammatical corrections.

Action

Motion: Vice-Chairman Roy made a motion to approve the July 1, 2008 minutes as amended.

Seconded: George Willant

Vote: In favor: Chairman Badger, Judith Carr, Chester

Jablonski, Rick McMenimen, Vice-

Chairman

Opposed:

Abstained: Janice Rosa

Janice Rosa abstained from voting because she had not been at the meeting.

July 15, 2008

The Board made a number of editorial changes.

Action

Motion: Chester Jablonski made a motion to approve the July 15, 2008 minutes as amended.

Seconded: Vice-Chairman Roy

Vote: In favor: Chairman Badger, Judith Carr, Chester

Jablonski, Rick McMenimen, Vice-

Chairman

Opposed:

Abstained: Janice Rosa, George Willant

Janice Rosa and George Willant abstained from voting because they had not been at the meeting.

August 12, 2008

The Board made a number of spelling and grammatical corrections.

Action

Motion: Judith Carr made a motion to approve the August 12, 2008 minutes as amended.

Seconded: Vice-Chairman Roy

Vote: In favor: Chairman Badger, Judith Carr, Chester

Jablonski, Rick McMenimen, Janice Rosa,

Vice-Chairman Roy, Val Shelton, George

Willant

Opposed:

Abstained:

August 26, 2008

Action

Motion: Chester Jablonski made a motion to approve the August 26, 2008 minutes as amended.

Seconded: Janice Rosa

Vote: In favor: Chairman Badger, Judith Carr, Chester

Jablonski, Rick McMenimen, Janice Rosa, Vice-

Chairman Roy, Val Shelton

Opposed:

Abstained: George Willant

George Willant abstained from voting because he had not reviewed the minutes.

The Board discussed how in depth the minutes of the meeting needed to be and recommended that the minutes be shortened to a summary of the meeting, including specific motions and decisions.

Val Shelton noted there is an OEP seminar on minutes of meetings. Chester Jablonski felt members from the public wishing to speak should need to sign in for the record.

Other Business

The Board discussed Class VI versus Class V roads.

Chairman Badger thanked the Board for their hard work during the last workshop and noted he was looking forward to the public hearing for the possible rezoning of the M-1 District.

Judith Carr asked if the latest draft could be sent to the Town Council yet. Town Planner Diane Hardy hoped to have a final draft available publicly by tomorrow, when the notice was put out. She would provide a copy to all Councilors.

Judith Carr suggested the Board encourage residents to attend the public hearing. She had been disappointed with the turn out for the last public hearing.

Town Planner Diane Hardy noted the Office of Energy and Planning is holding a seminar on October 25, 2008 at the Mountain Club in Loon. This is an excellent workshop and she encouraged Board members to attend.

Rick McMenimen noted the Strafford Regional Planning Commission would be holding a meeting on September 25, 2008 and a forum on September 29, 2008 to discuss SB 342. He would be attending this and offered to bring back information.

Adjournment

Action

Motion: Vice-Chairman Roy made a motion to adjourn at 9:42 p.m.

Seconded: Janice Rosa

Vote: All in favor